

No. 13-15475

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U.S. COURT OF APPEALS

JUL 24 2013

*In the*  
**United States Court Of Appeals**  
*For the*  
**Ninth Circuit**

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_ DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

STANISLAUS FOOD PRODUCTS COMPANY, a California corporation,  
*Plaintiff-Appellant,*  
v.

USS-POSCO INDUSTRIES, a California partnership; PITCAL, INC., a  
Delaware corporation; POSCO-CALIFORNIA CORPORATION, a Delaware  
corporation; UNITED STATES STEEL CORPORATION, a Delaware  
corporation; POSCO AMERICA STEEL CORPORATION, a Delaware  
corporation,  
*Defendants-Appellees.*

Appeal from Final Judgment and Orders of the  
United States District Court  
for the Eastern District of California (Fresno)  
Case No. 1:09-CV-00560-LJO-BAM

**PLAINTIFF-APPELLANT'S NOTIFICATION OF FILING UNDER SEAL  
OPENING BRIEF AND EXCERPTS OF RECORD**

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Pursuant to Ninth Circuit Rule 27-13(b), Plaintiff-Appellant Stanislaus Food Products Company respectfully notifies the Court that it is filing under seal its Opening Brief and Excerpts of Record. Stanislaus's Opening Brief and its Excerpts of Record contain material that Defendants-Appellees designated "Confidential" or "Highly Confidential" ("Protected Material") under the District Court's December 13, 2011 Stipulated Protective Order, as amended on August 31, 2012 (attached as Ex. A) ("Protective Order"). Stanislaus is required to file under seal the Protected Material because, under the Protective Order, Stanislaus is restricted from filing the material in the public record. *See* Ex. A at 17 (directing compliance with E.D. Cal. L.R. 141, governing filings under seal).

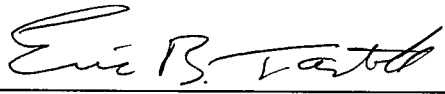
The Protected Material contained in Stanislaus's Opening Brief and each of the volumes of the Excerpts of Record are currently filed under seal with the District Court. *See* Ex. B (Order Granting Request to Seal Stanislaus's Opposition to Defendants' Joint Motion for Summary Judgment).

This Notification is filed simultaneously with the relevant documents, which have "under seal" prominently indicated on the cover and first page. *See* 9th Cir. R. 27-13(b). Stanislaus does not request that this Notification be filed under seal. *See* 9th Cir. R. 27-13(a) (stating that notifications "must be filed in paper format").

Respectfully submitted,

Dated: July 24, 2013

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

By:   
Eric B. Fastiff

William Bernstein (State Bar No. 65200)  
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**CERIFICATE OF SERVICE**

I hereby certify that on July 24, 2013, I caused the foregoing to be filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by hand delivery. Concurrently, I caused the foregoing to be served by overnight courier or hand delivery on the parties below, through their counsel.

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POSCO-CALIFORNIA CORPORATION

Dated: July 24, 2013

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

By:   
Brian Troxel



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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 STANISLAUS FOOD PRODUCTS  
12 COMPANY, a California corporation,

13 Plaintiff,

14 v.

15 USS-POSCO INDUSTRIES, a California  
16 partnership; PITCAL, INC., a Delaware  
17 corporation; POSCO-CALIFORNIA  
18 CORPORATION, a Delaware corporation;  
CORPORATION, a Delaware corporation;  
CORPORATION, a Delaware corporation,

19 Defendants.  
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Case No. 1:09-CV-00560-LJO-BAM

**STIPULATED PROTECTIVE ORDER  
GOVERNING DISCOVERY**

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1. **PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge that this Stipulated Protective Order does not entitle them to file confidential information under seal; the civil local rules set forth the applicable procedures.

2. **DEFINITIONS**

2.1 **Challenging Party**: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 **"CONFIDENTIAL" Information or Items**: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 **Designating Party**: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.4 **Disclosure or Discovery Material**: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.5 **Expert**: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a



1 Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a  
2 Party or of a Party's competitor.

3 2.6 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

4 Information or Items: highly sensitive "Confidential Information or Items," disclosure of which  
5 to another Party or Non-Party could create a substantial risk of serious harm that could not be  
6 avoided by less restrictive means, and that qualify under the standards set forth in section 5,  
7 below.

8 2.7 Lead Counsel of Record: Lieff, Cabraser, Heimann & Bernstein, LLP and  
9 G. Kip Edwards (as well as their support staff) as lead counsel for Plaintiff Stanislaus Food  
10 Products Company; Akin Gump Strauss Hauer & Feld LLP (as well as its support staff) as lead  
11 counsel for Defendants POSCO America Steel Corporation and POSCO-California Corporation;  
12 Steyer Lowenthal Boodrookas Alvarez & Smith as lead counsel for Defendant USS-POSCO  
13 Industries (as well as its support staff); Reed Smith LLP, McCormick, Barstow, Sheppard, Wayte  
14 & Carruth LLP and J. Michael Jarboe of The Law Department of United States Steel Corporation  
15 (as well as their support staff) as lead counsel for Defendants U.S. Steel Corporation and Pitcal,  
16 Inc.

17 2.8 Non-Party: any natural person, partnership, corporation, association, or  
18 other legal entity not named as a Party to this action.

19 2.9 Party: any party to this action, including all of its officers, directors,  
20 employees, consultants, retained experts, and Lead Counsel of Record (and their support staffs).

21 2.10 Producing Party: a Party or Non-Party that produces Disclosure or  
22 Discovery Material in this action.

23 2.11 Professional Vendors: persons or entities that provide litigation support  
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
25 organizing, storing, or retrieving data in any form or medium) and their employees and  
26 subcontractors.

1                   2.12 Protected Material: any Disclosure or Discovery Material that is  
2 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
3 ONLY."

4                   2.13 Receiving Party: a Party that receives Disclosure or Discovery Material  
5 from a Producing Party or another source.

6                   3. SCOPE

7                   The protections conferred by this Stipulation and Order cover not only Protected Material  
8 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
9 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
11 However, the protections conferred by this Stipulation and Order do not cover the following  
12 information: (a) any information that is in the public domain at the time of disclosure to a  
13 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
14 a result of publication not involving a violation of this Order, including becoming part of the  
15 public record through trial or otherwise; and (b) any information known to the Receiving Party  
16 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
17 obtained the information lawfully and under no obligation of confidentiality to the Designating  
18 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.  
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1                   **4. DURATION**

2                   Even after final disposition of this litigation, the confidentiality obligations imposed by  
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
7 including the time limits for filing any motions or applications for extension of time pursuant to  
8 applicable law.

9                   **5. DESIGNATING PROTECTED MATERIAL**

10                   5.1     Exercise of Restraint and Care in Designating Material for Protection.

11                   Each Party or Non-Party that designates information or items for protection under this  
12 Order must take care to limit any such designation to specific material that qualifies under the  
13 appropriate standards. To the extent it is practical to do so, the Designating Party must designate  
14 for protection only those parts of material, documents, items, or oral or written communications  
15 that qualify – so that other portions of the material, documents, items, or communications for  
16 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

17                   Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
18 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
19 unnecessarily encumber or retard the case development process or to impose unnecessary  
20 expenses and burdens on other parties) may expose the Designating Party to sanctions.

21                   If it comes to a Designating Party's attention that information or items that it designated  
22 for protection do not qualify for protection at all or do not qualify for the level of protection  
23 initially asserted, that Designating Party must promptly notify all other parties that it is  
24 withdrawing the mistaken designation.

25                   5.2     Manner and Timing of Designations. Except as otherwise provided in this  
26 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
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1 protection under this Order must be clearly so designated before the material is disclosed or  
2 produced. Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents,  
4 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
5 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
6 EYES ONLY" to each page that contains protected material. If only a portion or portions of the  
7 material on a page qualifies for protection, the Producing Party also must clearly identify the  
8 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
9 each portion, the level of protection being asserted.

10 Only attorneys of record in this action may affix a "HIGHLY CONFIDENTIAL –  
11 ATTORNEYS' EYES ONLY" designation, and must do so on a document-by-document basis.

12 A Party or Non-Party that makes original documents or materials available for  
13 inspection need not designate them for protection until after the inspecting Party has indicated  
14 which material it would like copied and produced. During the inspection and before the  
15 designation, all of the material made available for inspection shall be deemed "HIGHLY  
16 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
17 documents it wants copied and produced, the Producing Party must determine which documents,  
18 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
19 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or  
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains  
21 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
22 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
23 appropriate markings in the margins) and must specify, for each portion, the level of protection  
24 being asserted.

25 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
26 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
27 other proceeding, all protected testimony and specify the level of protection being asserted.

1 When it is impractical to identify separately each portion of testimony that is entitled to protection  
2 and it appears that substantial portions of the testimony may qualify for protection, the  
3 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding  
4 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to  
5 which protection is sought and to specify the level of protection being asserted. Only those  
6 portions of the testimony that are appropriately designated for protection within the 21 days shall  
7 be covered by the provisions of this Stipulated Protective Order.

8 Parties shall give the other parties notice if they reasonably expect a deposition,  
9 hearing or other proceeding to include Protected Material so that the other parties can ensure that  
10 only authorized individuals who have signed the "Acknowledgment and Agreement to Be  
11 Bound" (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a  
12 deposition shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY  
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

14 Transcripts containing Protected Material shall have an obvious legend on the title  
15 page that the transcript contains Protected Material, and the title page shall be followed by a list  
16 of all pages (including line numbers as appropriate) that have been designated as Protected  
17 Material and the level of protection being asserted by the Designating Party. The Designating  
18 Party shall inform the court reporter of these requirements. Any transcript that is prepared before  
19 the expiration of a 21-day period for designation shall be treated during that period as if it had  
20 been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety  
21 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
22 actually designated.

23 (c) for information produced in some form other than documentary and for any  
24 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
25 container or containers in which the information or item is stored the legend "CONFIDENTIAL"  
26 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions  
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1 of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
2 identify the protected portion(s) and specify the level of protection being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items does not, standing alone, waive the Designating  
5 Party's right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is  
7 treated in accordance with the provisions of this Order.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
10 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's  
11 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
12 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its  
13 right to challenge a confidentiality designation by electing not to mount a challenge promptly  
14 after the original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
16 resolution process by providing written notice of each designation it is challenging and describing  
17 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
18 written notice must recite that the challenge to confidentiality is being made in accordance with  
19 this specific paragraph of the Protective Order. The parties shall attempt to resolve each  
20 challenge in good faith and must begin the process by conferring directly (in voice to voice  
21 dialogue; other forms of communication are not sufficient) within 14 days of the date of service  
22 of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
23 confidentiality designation was not proper and must give the Designating Party an opportunity to  
24 review the designated material, to reconsider the circumstances, and, if no change in designation  
25 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
26 the next stage of the challenge process only if it has engaged in this meet and confer process first  
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1 or establishes that the Designating Party is unwilling to participate in the meet and confer process  
2 in a timely manner.

3           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
4 court intervention, the Designating Party shall contact the chambers of the relevant magistrate  
5 judge to schedule a hearing within 21 days of the initial notice of challenge or within 7 days of  
6 the parties agreeing that the meet and confer process will not resolve their dispute, whichever is  
7 earlier. If the Designating Party does not request such a hearing within 21 days (or 7 days, if  
8 applicable), the Challenging Party shall provide notice to the Designating Party. If the  
9 Designating Party does not request such a hearing within 4 business days of the notice, the  
10 Designating Party shall waive the confidentiality designation for each challenged designation. In  
11 addition, the Challenging Party may challenge a confidentiality designation at any time if there is  
12 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
13 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
14 competent declaration affirming that the movant has complied with the meet and confer  
15 requirements imposed by the preceding paragraph.

16           The burden of persuasion in any such challenge proceeding shall be on the  
17 Designating Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass  
18 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
19 to sanctions. Unless the designating party has waived the confidentiality designation by failing to  
20 request a hearing as described above, all parties shall continue to afford the material in question  
21 the level of protection to which it is entitled under the Producing Party's designation until the  
22 Court rules on the challenge.

23           7.    ACCESS TO AND USE OF PROTECTED MATERIAL

24           7.1    Basic Principles. A Receiving Party may use Protected Material that is  
25 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
26 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
27 disclosed only to the categories of persons and under the conditions described in this Order.



1 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
2 section 15 below (FINAL DISPOSITION). Protected Material must be stored and maintained by  
3 a Receiving Party at a location and in a secure manner that ensures that access is limited to the  
4 persons authorized under this Order.

5 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
7 disclose any information or item designated "CONFIDENTIAL" only to:

8 (a) the Receiving Party's Lead Counsel of Record in this action, as well as  
9 employees of said Lead Counsel of Record to whom it is reasonably necessary to disclose the  
10 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
11 Bound" that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees of the Receiving Party to whom  
13 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
14 and Agreement to Be Bound" (Exhibit A);

15 (c) Experts (as defined in this Order) of the Receiving Party to whom  
16 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
17 and Agreement to Be Bound" (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, and  
20 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
21 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is  
23 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
24 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
25 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
26 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
27 under this Stipulated Protective Order.  
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1 (g) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information.

3 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
4 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by  
5 the Designating Party, a Receiving Party may disclose any information or item designated  
6 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

7 (a) the Receiving Party's Lead Counsel of Record in this action, as well as  
8 employees of said Lead Counsel of Record to whom it is reasonably necessary to disclose the  
9 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
10 Bound" that is attached hereto as Exhibit A;

11 (b) Experts (as defined in this Order) of the Receiving Party to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
13 and Agreement to Be Bound" (Exhibit A);

14 (c) the court and its personnel;

15 (d) court reporters and their staff, professional jury or trial consultants, and  
16 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
17 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

18 (e) the author or recipient of a document containing the information or a  
19 custodian or other person who otherwise possessed or knew the information.

20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
21 **IN OTHER LITIGATION**

22 If a Party is served with a subpoena or a court order issued in other litigation that compels  
23 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

25 (a) promptly notify in writing the Designating Party. Such notification shall  
26 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to  
2 issue in the other litigation that some or all of the material covered by the subpoena or order is  
3 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
4 Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
6 the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the  
8 subpoena or court order shall not produce any information designated in this action as  
9 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a  
10 determination by the court from which the subpoena or order issued, unless the Party has obtained  
11 the Designating Party's permission. The Designating Party shall bear the burden and expense of  
12 seeking protection in that court of its confidential material – and nothing in these provisions  
13 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a  
14 lawful directive from another court.

15 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**  
16 **PRODUCED IN THIS LITIGATION**

17 (a) The terms of this Order are applicable to information produced by a Non-  
18 Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
19 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with  
20 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
21 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to  
23 produce a Non-Party's confidential information in its possession, and the Party is subject to an  
24 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
25 Party shall:

26 1. promptly notify in writing the Requesting Party and the Non-Party  
27 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
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1 Party;

2 2. promptly provide the Non-Party with a copy of the Stipulated  
3 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
4 description of the information requested; and

5 3. make the information requested available for inspection by the  
6 Non-Party.

7 (c) If the Non-Party fails to object or seek a protective order from this court  
8 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
9 produce the Non-Party's confidential information responsive to the discovery request. If the  
10 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
11 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
12 before a determination by the court. Absent a court order to the contrary, the Non-Party shall  
13 bear the burden and expense of seeking protection in this court of its Protected Material.

14  
15 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
17 Material to any person or in any circumstance not authorized under this Stipulated Protective  
18 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
19 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
20 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
21 made of all the terms of this Order, and (d) request such person or persons to execute the  
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

23 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
24 **PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
26 produced material is subject to a claim of privilege or other protection, the obligations of the  
27 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
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1 provision is not intended to modify whatever procedure may be established in an e-discovery  
2 order that provides for production without prior privilege review. Pursuant to Federal Rules of  
3 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
4 communication or information covered by the attorney-client privilege or work product  
5 protection, the parties may incorporate their agreement in the stipulated protective order  
6 submitted to the court.

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
9 person to seek its modification by the court in the future. The parties to this Action reserve all  
10 rights to apply to the Court for any order modifying this Order, seeking greater access to  
11 Protected Material than those provided above, or seeking further protection against discovery or  
12 other use of Protected Material.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
14 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
15 producing any information or item on any ground not addressed in this Stipulated Protective  
16 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
17 the material covered by this Protective Order.

18 12.3 Evidence. Nothing contained in this Order shall be construed as an  
19 admission that any document or information, or any testimony relating to such document or  
20 information, is or would be admissible in evidence in this case or in any other proceeding.

21 12.4 Agreement. Nothing contained in this Order shall affect the ability of the  
22 parties to alter the time periods set forth in this Order by agreement.

23 12.5 Jurisdiction. Nothing herein shall be construed as a determination by the  
24 Court, or as a consent or waiver by any foreign parent or affiliate of any Party, that such foreign  
25 parent or affiliate of any Party is subject to personal jurisdiction in this Court or that discovery as  
26 to such foreign parent or affiliate of any Party shall proceed pursuant to the Federal Rules of Civil  
27 Procedure.

1                   12.6 Subpoenas. When serving subpoenas on third parties, a copy of this Order  
2 (including Exhibit A) shall be included with the subpoena, and the subpoena shall expressly  
3 incorporate by reference the terms of this Order.

4                   **13. FINAL DISPOSITION**

5                   Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
6 Receiving Party must return all Protected Material to the Producing Party or destroy such  
7 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
8 compilations, summaries, and any other format reproducing or capturing any of the Protected  
9 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
10 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
11 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
12 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
13 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
14 capturing any of the Protected Material. Notwithstanding this provision, Lead Counsel of Record  
15 are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and  
16 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
17 reports, attorney work product, and consultant and expert work product, even if such materials  
18 contain Protected Material. Any such archival copies that contain or constitute Protected Material  
19 remain subject to this Protective Order as set forth in Section 4 (DURATION).

20                   **SO STIPULATED.**

21                   Dated: December 1, 2011

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27 /./

28 /./

**ORDER**

In addition to the above Stipulation between the parties – which the Court adopts in its entirety – the Court further ORDERS parties seeking to file a document falling within this Protective Order to comply with Local Rule 141. Within five (5) days of filing of any confidential document under seal, the party shall file a redacted copy of the document so filed. The redactions shall be narrowly tailored to protect only the information that is confidential or was deemed confidential.

IT IS SO ORDERED.

Dated: December 12, 2011

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE



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[Additional Counsel Listed On Signature Page]

*Attorneys for Plaintiff Stanislaus Food Products Co.*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(FRESNO)

STANISLAUS FOOD PRODUCTS  
COMPANY, a California corporation,

Plaintiff,

v.

USS-POSCO INDUSTRIES, a California  
partnership; PITCAL, INC., a Delaware  
corporation; POSCO-CALIFORNIA  
CORPORATION, a Delaware corporation;  
UNITED STATES STEEL  
CORPORATION, a Delaware corporation;  
POSCO AMERICA STEEL  
CORPORATION, a Delaware corporation,

Defendants.

Case No. 1:09-CV-00560-LJO-BAM

**STIPULATION AND ORDER  
MODIFYING STIPULATED  
PROTECTIVE ORDER**

Judge: Hon. Barbara A. McAuliffe

WHEREAS, during the August 3, 2012 informal telephonic conference, Plaintiff Stanislaus Food Products Company made an oral request to modify the procedure in the Stipulated Protective Order (Dkt. No. 336) regarding judicial intervention in challenges to confidentiality designations;

WHEREAS, the Court directed the parties to meet and confer regarding Plaintiff's request (Dkt. No. 408); and

1 WHEREAS the parties have met and conferred and agreed to changes to the  
2 Stipulated Protective Order;

3 NOW THEREFORE, IT IS HEREBY STIPULATED by the undersigned counsel  
4 on behalf of the parties identified below that the following changes be made to the Stipulated  
5 Protective Order (Dkt. No. 336):

6 Dkt. No. 336, Page 7, Line 21: Replace "14" with "10."

7 Dkt. No. 336, Page 8, Lines 3-15: Replace the first paragraph of  
8 section 6.3 with, "If the Parties cannot resolve a challenge without  
9 court intervention, the Challenging Party may contact the chambers  
10 of the relevant magistrate judge to schedule a hearing that will take  
11 place not less than 14 days from the date the parties hold the  
12 required meet and confer session. Not less than twelve days  
13 preceding the hearing date, the Challenging Party shall file a brief  
14 that states its challenge and its reasons for the challenge. The  
15 Designating Party shall respond seven days after the date the  
16 Challenging Party's brief is filed. Subject to the Court's  
17 availability, the parties shall schedule a hearing as soon as  
18 reasonably possible."

19 Dkt. No. 336, Page 8, Lines 19-22: Delete the first clause of the  
20 sentence so that the sentence reads, "All parties shall continue to  
21 afford the material in question the level of protection to which it is  
22 entitled under the Producing Party's designation until the Court  
23 rules on the challenge."

24 **IT IS SO STIPULATED.**

25 Dated: August 29, 2012

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*Counsel for Defendant USS-POSCO Industries*

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21  
22 IT IS SO ORDERED.

23 Dated: August 30, 2012

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(FRESNO DIVISION)

STANISLAUS FOOD PRODUCTS  
COMPANY, a California corporation,

Plaintiff,

v.

USS-POSCO INDUSTRIES, a California  
partnership; PITCAL, INC., a Delaware  
corporation; POSCO-CALIFORNIA  
CORPORATION, a Delaware corporation;  
UNITED STATES STEEL  
CORPORATION, a Delaware corporation;  
POSCO AMERICA STEEL  
CORPORATION, a Delaware corporation,

Defendants.

Case No. 1:09-CV-00560-LJO-BAM

**ORDER GRANTING PLAINTIFF  
STANISLAUS FOOD PRODUCTS  
COMPANY'S REQUEST TO SEAL  
PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' JOINT MOTION FOR  
SUMMARY JUDGMENT**

Judge: Hon. Lawrence J. O'Neill

Plaintiff Stanislaus Food Products Company ("Stanislaus") requested an order allowing it to file under seal (1) Stanislaus's Memorandum of Points and Authorities in Opposition to Defendants' Joint Motion for Summary Judgment, (2) Stanislaus's Response to Defendants' Joint Statement of Undisputed Material Facts, (3) Stanislaus's Statement of Disputed Facts, (4) the Declaration of Eric B. Fastiff in Support of Stanislaus's Opposition, and (5) the Declaration of

f073993.1

1 Thomas Cortopassi in Support of Stanislaus's Opposition because these materials contain  
2 information the parties or third-parties have designated "CONFIDENTIAL" or "HIGHLY  
3 CONFIDENTIAL" pursuant to the Stipulated Protective Order (Dkt. No. 336).

4 This Court determines that there are compelling reasons to protect the confidentiality of  
5 the information contained in the above-referenced materials and hereby **GRANTS** Stanislaus's  
6 request and directs the Clerk of the Court to file under seal the complete, unredacted versions of  
7 the above-referenced materials. These documents shall remain under seal indefinitely, pending  
8 further order of this Court.

9 Within five (5) days of service of this Order, Stanislaus shall file electronically in the  
10 public record a redacted version of Stanislaus's Memorandum of Points and Authorities in  
11 Opposition to Defendants' Joint Motion for Summary Judgment. The redactions shall be  
12 narrowly tailored.

13  
14  
15 IT IS SO ORDERED.

16 Dated: January 9, 2013

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE